

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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RICHARD T. GUILLOZ and MARY ELLEN  
GUILLOZ,

UNPUBLISHED  
May 13, 2008

Plaintiffs-Appellants,

v

No. 277603  
Wayne Circuit Court  
LC No. 02-200828-NO

FORD MOTOR CO.,

Defendant-Appellee,

and

ROUGE STEEL CO.,<sup>1</sup>

Defendant.

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Before: Wilder, P.J., and O’Connell and Whitbeck, JJ.

PER CURIAM.

Plaintiffs Richard Guilloz and Mary Ellen Guilloz appeal as of right the trial court’s order granting defendant Ford Motor Co. (Ford) summary disposition under MCR 2.116(C)(8) and (10). We affirm.

**I. Basic Facts And Procedural History**

This action arises out of an accidental explosion and fire at the Powerhouse located at the Ford Rouge Industrial Complex in Dearborn, Michigan (the Rouge complex). On February 1, 1999, while employees were performing a routine shutdown of a boiler located in the Powerhouse, a series of catastrophic explosions occurred, followed by fires that killed, injured, and severely burned employees within the Powerhouse, as well as causing significant destruction of the facilities.

Three years later, the Guillozes filed a complaint, alleging that Richard Guilloz, a truck driver at the Rouge complex, was “permanently injured” as a result of the explosion. The Guillozes asserted one count of negligence, alleging that defendants breached their duty of care

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<sup>1</sup> The trial court dismissed with prejudice all of the Guillozes’ claims against Rouge Steel Co. in October 2006. Therefore, Rouge Steel Co. is not a party to this appeal.

to operate and maintain the facilities in a safe manner so as to avoid injury to the employees working therein by failing to implement, enforce, and comply with proper safety procedures for the boiler shutdown, including proper training, testing, and oversight of employees operating the boiler. The Guillozes also asserted one count of “Gross Negligence/Intentional Tort,” alleging, in sum, that defendants “subjected Plaintiff to a continuously operative dangerous condition that they knew would cause injury, yet refrained from informing Plaintiff about the dangerous conditions so that Plaintiff was unable to take steps to avoid injury.” Within this count, the Guillozes also alleged that defendants “willfully and deliberately and without legal excuse or justification committed acts which were intentionally, deliberately and maliciously committed for the purpose of causing the Plaintiff to suffer great emotional and mental distress.” The Guillozes further alleged that defendants’ conduct resulted in loss of consortium to Mary Ellen Guilloz.

In December 2006, Ford moved for summary disposition under MCR 2.116(C)(8) and (10), arguing that Michigan law does not allow for remote bystander recovery under the circumstances alleged. More specifically, Ford pointed out that Richard Guilloz’s deposition revealed that he was not in the Powerhouse either during or after the accident and that he suffered no direct physical injury from the accident. Rather, according to his deposition, Richard Guilloz’s claim was based on his allegation that he was “one hundred (100%) percent disabled by exacerbation of Post Traumatic Stress Disorder” (PTSD) as a result of the accident. However, as Ford noted, Richard Guilloz was driving his truck on the other side of the Rouge River ship canal across from the Powerhouse and did not even see or hear the explosion, but only saw the black plume of smoke. Although he attempted to drive towards the Powerhouse to see if he could help, emergency personnel stopped him twice. And, although he could see that “the windows were all blown out, and the building was charred,” he never got closer than several hundred yards from the Powerhouse. After he was turned away from the Powerhouse, he spent the remainder of the day at the hot strip mill, which was 1.5 miles away from the explosion site. Ford further argued that Michigan law does not allow for a loss of consortium claim where there is no underlying injury to the primary plaintiff.

Apparently, Richard Guilloz’s claims were based in the fact that he had allegedly suffered from depression and PTSD for years before the accident as a result of his experiences in Vietnam. Guilloz testified during his deposition that he served as a Marine in Vietnam from March 1969 to March 1970, and during that time, he “killed many people.” According to Richard Guilloz, the smells of the explosion and “death,” and the sight of men staggering around with blackened faces reminded him of a “baby Vietnam.” Although Guilloz stated that the explosion did not physically injure him, he claimed that he suffered “mental injury”: “I was numb. I was just totally devastated. I just couldn’t believe it. I was in tears. I was crying. I quit crying by the time I got to the hot strip mill.”

Guilloz testified that over a year after the explosion he was hospitalized at Oakwood psychiatric hospital for nine days “because of the explosion.” Guilloz stated that after the explosion his job required him to drive past the Powerhouse everyday, which bothered him: “It got worse every day.” Guilloz described his working conditions in other buildings on the complex grounds after the explosion, stating: “I worked in the dark, damp, and dank for months; it felt dangerous. The smell was awful and the sounds in the dark were eerie [sic] and frightening.” Guilloz explained that eventually he began to change:

I couldn't do my job. Terrible, terrible emotional strain on me. I was all over my family, screaming at my family. . . . I was not doing my job the way that I was supposed to. I had blowups at the office. I smashed a guy's desk with a part, a large steel part.

\* \* \*

I just noticed all these weird things that were going on with me. My whole demeanor changed. My whole demeanor changed the day of this explosion. I became a different person. I went into a—I went into a mode that was like Vietnam. I talked differently. I acted differently. I was more military-like. I was just a different person. Everybody noticed it.

\* \* \*

I was totally paralyzed. My heart was pounding. My stomach was in knots. I just couldn't get myself to do anything.

Guilloz also claimed that he “felt suicidal for a while” because of the explosion. According to Guilloz, after the explosion he was diagnosed with PTSD: “That triggered an episode is the way [the doctors] put it to me. That posttraumatic stress syndrome was triggered by the explosion.”

Richard Guilloz also testified that in April 1992, Rouge Steel sent him to see a psychiatrist after he told his superintendent that he was going to kill three of his foremen. According to Guilloz, he was going to use gasoline to burn the three men because “[o]ne was stealing[,]” “[t]he other two were just belligerent[,]” and he was tired of them picking on him. Guilloz explained that he told his superintendent about his plan after he realized that his actions would hurt his family. He was immediately admitted to Oakwood, and he stayed there for one month. During his hospitalization, Guilloz was prescribed various antidepressant medications, which he was continuing to take at the time of his deposition in 2002. Guilloz also testified that at the time of his deposition he was receiving treatment at the University of Michigan High Anxiety Clinic. Guilloz stated that after his April 1992 hospitalization, he returned to work in August 1992. However, a month later, the foremen “started on [him] again” and he began having “the same symptoms,” so he was off work again for almost two years, during which time he claimed he “basically went nuts” and was “completely incapacitated.” Although he was not re-hospitalized during that time, he did receive treatment with a psychiatrist “once a week, once every two weeks.”

The Guillozes responded to Ford's motion for summary disposition, arguing that Ford failed to plead bystander liability as an affirmative defense and that therefore it was waived. The Guillozes further asserted that, even if Ford had properly pleaded bystander liability, the defense was inapplicable to the facts of their case because they were not claiming injury to Richard Guilloz as a remote bystander. Rather, they were asserting direct claims for negligence and gross negligence based on Richard Guilloz having to endure the post-explosion working conditions “at a severely compromised industrial facility . . . akin to a war zone.” In their motion, the Guillozes also asserted that the explosion aftermath actually caused physical injury to Richard Guilloz, citing expert testimony that long-term PTSD can “cause reduced brain-mass volume, activation of the left anterior cingulate cortex which regulates stress functions and

other functional alterations of the neurosystem itself.” The Guillozes also argued that the bystander liability defense could not defeat their intentional torts claims. However, the Guillozes have abandoned their intentional tort claims on appeal, and we therefore need not address those claims further.

Ford replied to the Guillozes’ response, pointing out that they were altering their claim from that asserted in their complaint by now arguing that it was the aftermath of the explosion and not necessarily the explosion itself that triggered or aggravated Richard Guilloz’s PTSD. Regardless, Ford contended, it owed no duty to protect Richard Guilloz from his claimed emotional/mental injuries. Ford further argued that its bystander liability defense was not waived because such a defense need not be pleaded as an affirmative defense given that Ford was arguing that the Guillozes’ claims, no matter how presented, sounded essentially in a claim of negligent infliction of emotional distress, for which the Guillozes failed to state a cognizable claim.

At the hearing on the motion, after noting that the Guillozes’ claims on the motion had been altered from their original complaint, the trial court focused on the issue of what duty Ford owed, if any, to Richard Guilloz. Counsel for Guilloz conceded that Richard Guilloz was clearly a bystander to the actual explosion, but argued that Ford violated a direct duty associated with subjecting Guilloz to the aftermath conditions at the facility:

As to the explosion but as to his, as to what happened thereafter, him working in this compromised facility for months after the explosion where he was subjected to unsafe working conditions where he was exposed to no lights, flooded basements, all that stuff.

\* \* \*

His injury, his PTSD according to my expert was caused by his exposure to these workplace conditions which Ford knew or should have known would be the direct and proximate result of their negligence if the power house blew up.

\* \* \*

They owed a duty to a safe workplace that they knew was occupied by lots of people beyond the powerhouse. They knew their powerhouse was the heart and soul of a plant. They knew that flooding would occur. They knew that unsafe conditions would occur if the power plant blew up. And my client was exposed to those.

Upon further questioning by the trial court, the Guillozes’ counsel conceded that they were not pleading bystander liability with respect to their “aftermath” claim; therefore, the trial court ruled that Ford’s motion for summary disposition must be granted as to bystander liability, stating, “Well I don’t [sic] you can have it both ways. Either he’s a bystander or he’s not a bystander.” Counsel for the Guillozes then objected, arguing that his claim, as allegedly pleaded, for “general negligence” (later framed again as negligent infliction of emotional distress) must nevertheless survive. However, the trial court then ruled as follows: “I am persuaded as a matter of law irrespective of any bystander liability that there is no cause of action in Michigan for an [sic]

negligent infliction of emotional distress.” Accordingly, the trial court granted Ford’s motion for summary disposition. The Guillozes now appeal.

## II. Summary Disposition

### A. Standard Of Review

Where, as here, the trial court grants a motion for summary disposition brought pursuant to both MCR 2.116(C)(8) and (C)(10), and it is clear that the court looked beyond the pleadings (here, the trial court indicated at oral argument that it looked at depositions, affidavits, and interrogatories), this Court “will treat the motions as having been granted pursuant to MCR 2.116(C)(10),” which “tests whether there is factual support for a claim.”<sup>2</sup> Under MCR 2.116(C)(10), a party may move for dismissal of a claim based on the ground that there is no genuine issue with respect to any material fact and the moving party is entitled to judgment or partial judgment as a matter of law. The moving party must specifically identify the undisputed factual issues, and support its position with affidavits, depositions, admissions, or documentary evidence.<sup>3</sup> When reviewing the motion, the court must consider all the documentary evidence in the light most favorable to the nonmoving party.<sup>4</sup>

### B. Guillozes’ Claims

#### (1) Negligence

The Guillozes argue that bystander liability does not apply to this case because they allege that Richard Guilloz suffered injuries from direct exposure to unsafe working conditions caused by Ford’s negligence. They adamantly assert that they have “never asserted that [Richard Guilloz’s] recovery against Ford related in any way to his status as a ‘bystander’ to the injuries inflicted on those who were inside the Power House [sic].” Therefore, they contend that Ford’s arguments regarding bystander liability are misplaced. Rather, the Guillozes assert, their claim is for negligence based on the exacerbation of the Richard Guilloz’s PTSD condition as a result of having to work in the aftermath conditions of the explosion. However, they have failed to present any argument on appeal regarding what duty Ford owed to them, if any. Because duty is an essential element of any negligence claim,<sup>5</sup> they have effectively abandoned their claim to the extent it is based in ordinary negligence.<sup>6</sup> Nevertheless, we note that there is no general duty that one owes to protect others’ emotions nor is there any duty to protect an unforeseeable plaintiff.<sup>7</sup> Therefore, we conclude that the Guillozes have failed to state a claim for negligence.

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<sup>2</sup> *Kefgen v Davidson*, 241 Mich App 611, 616; 617 NW2d 351 (2000).

<sup>3</sup> MCR 2.116(G)(3)(b); *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999).

<sup>4</sup> MCR 2.116(G)(5); *Maiden*, *supra* at 120.

<sup>5</sup> *Fultz v Union-Commerce Assocs*, 470 Mich 460, 463; 683 NW2d 587 (2004).

<sup>6</sup> See *Yee v Shiawassee Co Bd of Comm’rs*, 251 Mich App 379, 406; 651 NW2d 756 (2002) (stating that a party abandons an allegation of error by failing to brief its merits on appeal).

<sup>7</sup> *Graves v Warner Bros*, 253 Mich App 486, 494; 656 NW2d 195 (2002).

## (2) Negligent Infliction Of Emotional Distress

To the extent that the Guillozes assert a claim of negligent infliction of emotional distress, we note that although Michigan does recognize claims for negligent infliction of emotional distress, such claims only apply where:

1. The injury inflicted on the third person must be serious enough to cause severe mental disturbance to the plaintiff.
2. The mental shock must result in actual physical harm.
3. Recovery is limited to members of the immediate family of the third person who is injured.
4. The bystander-plaintiff must be present at the time of the accident, or at least the shock must be fairly contemporaneous with the accident.<sup>[8]</sup>

Here, none of the parties injured by the explosion were the Guillozes' family members. A claim of negligent infliction of emotional distress is, therefore, clearly inapplicable under the circumstances presented here.

Relying on *Maldonado v National Acme Co.*,<sup>9</sup> the Guillozes additionally argue that even if the bystander rule does apply to this case, the rule does not bar recovery when the plaintiff is claiming physical injury/symptoms based on "fear for his own safety." Therefore, the Guillozes argue that Richard Guilloz's fear for his own safety while working at the unsafe plant in the months following the explosion supports his claims in this case. However, we find the *Maldonado* holding distinguishable. In that case, the court questioned whether the plaintiff was a mere bystander when he was close enough to touch the victim at the time the accident occurred, he barely avoided being injured himself, and he was struck by flesh, bone fragments, blood, and metal. Conversely, here, Richard Guilloz was nowhere near the explosion site when it occurred and only witnessed the aftermath.

In sum, we conclude that the trial court did not err in granting Ford's motion for summary disposition on the Guillozes' claims.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Peter D. O'Connell  
/s/ William C. Whitbeck

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<sup>8</sup> *Maldonado v National Acme Co.*, 73 F3d 642, 645 (CA 6, 1996), citing *Nugent v Bauermeister*, 195 Mich App 158, 159-161; 489 NW2d 148 (1992).

<sup>9</sup> *Maldonado*, *supra* at 645.